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END5007USNPRemarksStatus of Claims:

Claims 1-20 are rejected. Claims 1, 16, and 17 are amended. Claims 1-20 remain pending. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Applicant respectfully requests that the present amendments be entered despite the finality of the pending rejections. Applicant submits that the present amendments do not raise issues that would require further consideration or search. Applicant further submits that the present amendments do not raise new issues. In particular, Applicant notes that the present amendments merely emphasize the "open" nature of the distal end of the sample tube recited in the claims, which was the subject of Applicant's arguments in the Response filed 05/08/06. Furthermore, the present amendments place the application in better form for appeal. The present amendments should therefore be entered

§ 102 Rejections:

Claims 1-3, 7, 9-13, and 17-20 were rejected under 35 U.S.C. §102(b) as being anticipated by Gregoire et al. (U.S. Patent No. 5,944,673). Applicant respectfully traverses these rejections.

Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim, and the elements must be arranged as required by the claim. Under this standard, Applicant submits that Gregoire et al. fails to anticipate independent claim 1, amended independent claim 16, and amended independent claim 17.

Amended independent claim 1 recites a sample tube having an open distal end defining a generally circular opening, wherein the sample tube defines a central axis, wherein the generally circular opening is positioned on the central axis such that the central axis perpendicularly intersects the generally circular opening. Gregoire et al. fails to teach or suggest such limitations, particularly in the arrangement required by the claims. Accordingly, Applicant respectfully submits that Gregoire et al. fails to anticipate claim 1 in accordance with MPEP 2131, and respectfully request that the rejections be withdrawn.

Amended independent claim 17 recites an act of advancing a hollow sample tube that has an open distal end, wherein the open distal end comprises a distally facing opening

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defined by the distalmost perimeter of the open distal end. Gregoire et al. fails to teach or suggest such limitations, particularly in the arrangement required by the claims. Accordingly, Applicant respectfully submits that Gregoire et al. fails to anticipate claim 17 in accordance with MPEP 2131, and respectfully request that the rejections be withdrawn.

§ 103 Rejections:

Claims 4-6 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Gregoire et al. in view of Bates et al. (U.S. Patent No. 6,273,861). Claims 8 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Gregoire et al. in view of Burbank et al. (U.S. Patent No. 5,526,822). Claims 14-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Gregoire et al. in view of Tsonton et al. (U.S. Pub. No. 2004/0077972). Claims 18 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Gregoire et al. in view of Chin et al. (U.S. Patent No. 5,195,533). Applicant respectfully traverses these rejections.

Under MPEP 2143, in order to establish a *prima facie* case of obviousness, the prior art reference or combination of references must teach or suggest all of the limitations of a claim. A *prima facie* case of obviousness also requires that there be some teaching suggestion, or motivation to modify the references either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP 2143.01. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.

In view of the foregoing requirements for a *prima facie* case of obviousness, Applicant submits that the combined art of record fails to render the amended claims obvious. In particular, Applicant notes that the combination of references fails to teach or suggest all of the limitations of each amended independent claim in accordance with MPEP 2143.03. In addition, Applicant submits that even if the combined art of record taught or suggested all of the limitations of each present independent claim, there is no teaching, suggestion, or motivation to modify or combine the references to obtain the invention presently claimed, such that a *prima facie* case of obviousness has not been, and cannot be, established in accordance with MPEP 2143.01.

With respect to amended independent claim 16, Applicant notes that the claim recites a sample tube having an open distal end defining a distal opening, wherein the sample tube defines a central axis, wherein the distal opening defines a plane transverse to the sample tube, wherein the central axis intersects the plane. The combined art of record fails to teach or

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suggest such limitations. Accordingly, the combined art of record fails to render amended independent claim 16 obvious in accordance with MPEP 2143.03, and the rejection should therefore be withdrawn.

Furthermore, even if the combined art of record taught or suggested all of the elements of any of the independent claims, the art is devoid of any suggestion or motivation to modify or combine the teachings of the references in order to obtain the claimed invention. Indeed, MPEP 2143.01 admonishes that "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." (emphasis in original). *Actual evidence* of a suggestion, teaching, or motivation to combine prior art references must be shown. *In re Dembiczak*, 50 USPQ2d 1614 (Fed. Cir. 1999). Instead of providing the requisite evidence in the prior art suggesting the desirability of the invention claimed herein, the Office instead relies solely on conclusory statements and impermissible hindsight reconstruction. In the pending Office Action, the Office has purported to address this issue by invoking stock language from the MPEP regarding hindsight reasoning, but the Office has still failed to provide the evidence of a motivation to combine or modify. Stock language from the MPEP cannot satisfy this evidentiary burden. Because the evidence of motivation required by MPEP 2143.01 is lacking, Applicant respectfully requests that the rejection be withdrawn.

Beyond the foregoing shortcomings with respect to the rejections of the independent claims, Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for novelty and non-obviousness.

To the extent that the present amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. For instance, and without limitation, Applicant maintains that the Office's reading of Gregoire to include an "open distal end" of a sample tube is unreasonable and beyond how one of ordinary skill in the art would read Gregoire. As previously noted by Applicant, Gregoire explicitly calls such distal end "closed," which is the opposite of "open." While Applicant has noted several distinctions over the art of record, Applicant notes that several other distinctions exist, and Applicant preserves all rights and arguments with respect to such distinctions.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance.

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Respectfully submitted,

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